

109801

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Protest

10,657

FILE: B-194011

DATE: July 3, 1979

MATTER OF: Patrician

DIGEST:

1. Decision as to whether procurement should be set aside for small business is within province of contracting agency.
2. Protester's contention that solicitation requirement that bidders quote prices for items on f.o.b. destination basis is unfair to small businesses is without merit. Since solicitation provides for multiple awards, GAO finds nothing in solicitation that would prevent any business firm, large or small, from quoting on assumption that it would receive awards on all items to be shipped to same destination point.
3. Contract using agency is not required to equalize competition on a particular procurement by considering competitive advantage accruing to firms because of their own particular circumstances.

Patrician (Patrician) protests award under solicitation No. FEFP-S1-0097-A issued by the Federal Supply Service, General Services Administration (GSA). The solicitation anticipates multiple awards of indefinite quantity contracts for items of office furniture to the executive branch of the Government.

Patrician states that certain items of office furniture were set aside for small business competition on the preceding procurement. In the instant solicitation, however, such set aside was deleted. Patrician challenges this deletion which it believes was the result of a finding by GSA that the small businesses had quoted higher prices on these items than the prices offered by large business concerns. Patrician argues that the prices it has quoted in the past should be more thoroughly analyzed. Patrician, in support of this argument, refers to a tabulation it has made of its prices on the particular items over the last 4 years and the applicable consumer price and wholesale price indices for the items over the same period. Patrician contends that the tabulation reveals that while costs were rising almost 35 percent, its prices have actually declined on almost all of these items of furniture.

In general, Patrician believes that GSA has not been as vigorous as it ought to be in trying to find situations or items of furniture where small business set asides would be appropriate. According to Patrician, more than 95 percent of the furniture manufacturers in the United States are small businesses; yet, in the instant procurement GSA could not find a single "seating" item which could be set aside.

Patrician also contends that the method for quoting prices under the solicitation is unfair to small businesses. In support of this contention, Patrician alleges that, in effect, the solicitation requires small businesses to quote delivered prices which include freight costs while, in effect, permitting large businesses to calculate their freight costs and their bid on carload lots since large businesses alone can "gang orders" to achieve freight economics. As a solution to this alleged inequality, Patrician urges that the Government either order the items of furniture it needs in carload lots or, if ordering less than a carload, to order freight on board (f.o.b.) with freight costs billed as a separate item.

The decision whether a procurement should be set aside is within the authority and discretion of the contracting agency. Par-Metal Products, Inc., B-190016, September 26, 1977, 77-2 CPD 227. Moreover, while it is the policy of the Government to award a fair proportion of purchases of supplies and services to small business, neither the provisions contained in the Federal Procurement Regulation (FPR) nor the provisions of the Small Business Act (15 U.S.C. § 631 et seq.) make it mandatory that there be set aside for small business any particular procurement. Groton Piping Corporation and Thames Electric Company (joint venture), B-185755, April 12, 1976, 76-1 CPD 247. Consequently, this Office is generally reluctant to second guess an agency's decision not to set aside a procurement and has declined to consider protests against such decision. See Francis and Jackson, Associates, B-190023, January 31, 1978, 78-1 CPD 79, and the cases cited therein. We do note, however, that certain items under the solicitation were set aside for small businesses. Further, three types of chairs which previously had been set aside were not because there had been only one eligible small business bidder last year.

With regard to Patrician's contention of unfairness, GSA's method of obtaining price quotes from bidders, the solicitation states that for the items covered by Part I prices shall cover delivery to GSA supply distribution facilities specified in the item listing portion. The solicitation does provide space in both the Part I and Part II Schedules for bidders to quote their f.o.b. origin prices for each item of furniture. However, the Method of Award sections for both Part I and Part II of the solicitation state that f.o.b. origin will not be considered in the evaluation of offers but that awards on an f.o.b. origin basis will be made where f.o.b. origin prices are reasonable. The f.c.b. origin prices given by the bidders are for informational purposes. They will be used by GSA only to determine whether to award on an f.o.b. origin basis as opposed to an f.o.b. destination basis.

The Method of Award sections also provide for multiple awards. For the items covered by the Part I Schedule, award is to be made item-by-item on the basis of the Government's estimated peak monthly requirements

to the low responsive bidders. For the groups of items listed in the Part II Schedule, award is to be made in the aggregate by group for each of the three commercial zones specified by the solicitation. The low aggregate bidder is determined by multiplying the unit price offered on each group of items by the estimated quantity needed and then adding "the resultant extensions." As to the individual items covered by Part II, award is to be made on an item-by-item basis for each zone.

We fail to see from the foregoing any unfairness to small businesses. Basically, the determination of the terms of delivery depends solely on what is most advantageous to the Government. FPR § 1-19.202-7(a). Further, we believe that any advantage that a bidder might have as far as lower shipping costs would be because of a favorable geographic location, such as being close to several GSA supply distribution facilities. Any bidder's favorable geographic location would, in our opinion, be completely unrelated to its status as either a large or small business.

Furthermore, Patrician has not explained how large businesses have the advantage of being able to calculate their freight costs based on carload lots. We recognize that a bidder could lower its freight costs for a particular item by assuming that it will also receive awards for the other items which are to be shipped to the same GSA supply distribution point. For example, a bidder quoting on an estimated quantity of straight-leg chairs to Denver, Colorado, could assume that it will also be awarded contracts for orders of rotary chairs, without arms and rotary chairs with arms to Denver, Colorado, and calculate its bid accordingly. Nevertheless, all bidders, whether large or small, are capable of quoting prices on this basis. We find nothing in the solicitation that would prevent a small business from quoting on the assumption it would receive awards on all the items that are to be shipped to the same supply distribution point. Of course, there is no guarantee to any bidder, large or small, that orders will be placed in carload lots. Orders are based on demand, which may be more or less than carload lots.

Although it is unclear, Patrician also appears to be arguing that large businesses can combine items of Government-ordered furniture with their commercial furniture orders and thus have full railroad car lots. We believe that this could very well be possible for the GSA supply distribution points that are major cities such as Denver, Colorado, or Fort Worth, Texas. Nevertheless, the purpose of competitive procurement is not to insure that all offerors face the same odds in competing for Government contracts. IMBA, Incorporated, B-188364, B-187404, November 9, 1977, 77-2 CPD 356. We have consistently stated that the Government is not required to equalize competition on a particular procurement by considering the competitive advantage accruing to firms because of their own particular circumstances. See National Motors Corporation; Die Mesh Corporation; Fuel Propulsion Corporation, B-189933, June 7, 1978, and the cases cited therein.

The test to be applied is whether the competitive advantage enjoyed by a particular offeror is the result of a preference or unfair action by the Government. See Telos Computing, Inc., 57 Comp. Gen. 370 (1978), 78-1 CPD 235, and the cases cited therein. The record here reveals no preference or unfair action on the part of GSA. The fact that a large business may be better able to ship in full railroad car lots than a small business is solely the result of that bidder's particular business circumstances.

The protest is denied.

R. F. Kimm
Deputy Comptroller General
of the United States